

ORDINANCE NO. 90- 4

ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA, ENACTING THE
ROADSIDE STAND AND VENDORS ORDINANCE;
PROVIDING FOR TITLE; PROVIDING FOR AUTHORITY;
PERMIT REVIEW BY THE COUNTY ENGINEER;
COMMERCIAL USE OF RIGHT-OF-WAY PROHIBITED
WITHOUT PERMIT; PROHIBITION OF VENDING ON
PUBLIC SIDEWALKS OR AREAS ABUTTING PUBLIC
SIDEWALKS OR COUNTY RIGHTS-OF-WAY; PROCEDURES
FOR APPLICATION FOR PERMIT FEES; CRITERIA FOR
PERMIT ISSUANCE; CONDITIONS OF PERMITS; DAMAGE
TO COUNTY ROADS OR UPON NOTICE BY THE COUNTY
ENGINEER; RENEWAL OF PERMITS; REVOCATION OF
PERMITS; APPEAL; VIOLATION OF ORDINANCE;
ENFORCEMENT; REPEAL OF LAWS IN CONFLICT;
SEVERABILITY; INCLUSION IN THE CODE OF LAWS
AND ORDINANCES; EFFECTIVE DATE

WHEREAS, the Board of County Commissioners of Palm Beach
County now finds and determines that it is in the best interest
of the residents and visitors of the County to regulate the
commercial use of County owned or maintained rights-of-way and
public sidewalks and to control the location, access and type of
commercial activities allowed on rights-of-way and sidewalks
within the unincorporated areas of the County; and

WHEREAS, pursuant to Florida Statutes §336.02, the Board
of County Commissioners of Palm Beach County is invested with the
general superintendence and control of county roads; and

WHEREAS, pursuant to Palm Beach County Ordinance 72-
21, it is unlawful to make commercial use of the right-of-way of
any County maintained road by any person for the purpose of
selling, advertising or displaying for sale any merchandise
without a permit; and

WHEREAS, the primary purpose of the County rights-of-
way and sidewalks in Palm Beach County is for the safe and
efficient use by vehicular and pedestrian traffic; and

WHEREAS, the County has adopted a comprehensive approach
to land use regulation to protect property values and the
environment; and

WHEREAS, the unregulated use of County right-of-way will
frustrate the County's land use objectives; and

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1 **WHEREAS**, the County finds and determines that the
2 limited use of rights-of-way and public sidewalks for the sale of
3 limited commodities furthers the public interest by reducing the
4 number and length of trips necessary to obtain such commodities
5 for the working population of the County; and

6 **WHEREAS**, the County further recognizes and determines
7 that it is in the best interest of the citizens of Palm Beach
8 County to allow for the regulated sales of fresh agricultural and
9 prepared food products under specified conditions in areas of the
10 County that are not abutting residentially zoned property or
11 property which has been rejected for commercial zoning within the
12 last year.

13 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
14 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

15 **SECTION 1 - TITLE:**

16 This ordinance shall be cited as the "Roadside Stand and
17 Vendors Ordinance."

18 **SECTION 2 - AUTHORITY:**

19 This ordinance is adopted pursuant to the authority
20 granted to charter counties under Article VIII, Section 1(g) of
21 the State of Florida Constitution and Chapter 125, Florida
22 Statutes, Chapter 163.3161 et seq., Florida Statutes, regarding
23 local government comprehensive planning.

24 **SECTION 3 - PERMIT REVIEW BY THE COUNTY ENGINEER:**

25 The Board of County Commissioners of Palm Beach County
26 hereby authorizes and empowers the County Engineer or his duly
27 authorized representative to receive and review permit
28 applications, collect fees, issue and revoke permits allowing
29 permittee to make commercial use of the public rights-of-way
30 within the County road system.

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SECTION 4 - COMMERCIAL USE OF RIGHT-OF-WAY PROHIBITED

WITHOUT PERMIT:

A. It is unlawful and subject to the penalties and procedures provided in this ordinance for any person or business entity to make any commercial use of County owned or maintained rights-of-way or appendages thereto including, but not limited to, rest areas, wayside parks, boat launching ramps, weigh stations and scenic easements in the unincorporated areas of Palm Beach County, without first obtaining a permit for permissible use in accordance with the provisions of this ordinance.

Commercial use includes, but is not limited to, the sale, advertising, or display for sale of any merchandise; servicing or the repairing of any vehicles, except for the rendering of emergency service; storage of vehicles being serviced or repaired on abutting property or elsewhere; the solicitation for the sale of goods, property, or services, whether for profit or charity; and the display of advertising of any kind.

B. A permit issued to a roadside vendor is valid only to the person, corporation, or business entity to whom it is issued and named therein and is not transferable. In other words, no one may make any "commercial use" of any County right-of-way unless they personally have a valid permit issued in their name.

C. No roadside stand shall be allowed to locate adjacent to residentially zoned property or property which has been rejected for commercial zoning under the Palm Beach County Zoning code within the last year.

D. Notwithstanding anything herein to the contrary, no occupational license issued pursuant to Ordinance 72-7 as amended by Ordinance 87-4 shall be deemed a permit for any vendor to vend from any County right-of-way.

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1 SECTION 5 - PROHIBITION OF VENDING ON PUBLIC SIDEWALKS
2 OR AREAS ABUTTING PUBLIC SIDEWALKS OR COUNTY RIGHTS-OF-WAY:

3 It is illegal and subject to penalties and procedures
4 provided in this ordinance for any person or business entity on
5 any public sidewalk, area, doorway, entranceway or property
6 abutting a public sidewalk, bike path or County right-of-way in
7 the unincorporated area of Palm Beach County to peddle, vend, or
8 solicit off street, sidewalk or road traffic for the sale of real
9 or personal property, activities, excursions or trips (except in
10 connection with an ongoing legally existing business which
11 complies with all applicable land development regulations and only
12 to the extent allowed in the zoning district applicable to the
13 abutting property).

14 SECTION 6 - PROCEDURES FOR APPLICATION FOR PERMITS:

15 The sale of agricultural products and prepared foods
16 from stands and mobile vendors meeting the requirements of this
17 ordinance may be allowed on County rights-of-way in the
18 unincorporated portion of Palm Beach County provided the vendor
19 first obtains a permit from the Palm Beach County Engineering
20 Department. The Engineering Department shall only issue permits
21 if the applicant meets the following requirements:

22 A. Applies for the permit on a form provided by the
23 Engineering Department.

24 B. Submits an application, including a signed copy of
25 the permit rules provided in this ordinance, certifying that the
26 applicant has read and understands the rules and agrees to abide
27 by them.

28 C. Has posted a One Thousand Dollar (\$1,000)
29 performance bond or other satisfactory security with the
30 Engineering Department securing any costs which might be incurred
31 by the County due to the applicant's noncompliance with this

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1 ordinance or damage resulting to roadway pavements, sidewalks or
2 other improvements.

3 D. Has provided the County Engineering Department with
4 the name and address of the upland property owner and any adjacent
5 property owners within 100 feet of the proposed roadside stand
6 location, if said upland or adjacent property is improved. The
7 Engineering Department will then send a certified letter, return
8 receipt requested, to these property owners on behalf of the
9 permit applicant, advising them that they have fifteen (15) days
10 from receipt of notice in which to object to the proposed permit.
11 If the permit applicant otherwise qualifies, the permit will
12 automatically be issued after the passage of fifteen (15) days
13 after receipts are returned to the sending Engineering Department
14 if no objections are received.

15 E. Provides a location sketch showing the width of
16 pavement, width of right-of-way and location of stand proposed in
17 the right-of-way.

18 F. Submittal to the Engineering Department, a
19 certified copy of liability insurance paid in full, covering the
20 period for which the permit is issued, in the minimum amount of
21 Two Hundred Thousand Dollars (\$200,000) per occurrence naming Palm
22 Beach County as an additional co-insured party. Execution of an
23 indemnification agreement stating that in consideration of the
24 County's issuing a permit pursuant to the provisions of Ordinance
25 No. 90- , the vendor hereby releases, holds harmless, and agrees
26 to indemnify and defend Palm Beach County, its agents, employees,
27 and successors, from any and all liabilities, causes of action,
28 claims, and/or lawsuits, as well as any and all damages,
29 judgments, settlements, attorney fees, costs and other expenses
30 which arise or may ever arise as a result of the operation of a
31 roadside stand.

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1 G. Submittal of a list of goods or items intended to
2 be sold.

3 H. Furnishing of a current State of Florida sales tax
4 number.

5 SECTION 7 - FEES:

6 A. The permit fee is adopted to supplement the cost of
7 issuing permits, performing inspections, reviewing stand
8 locations, stand positions within the right of way, and analysis
9 of traffic volumes.

10 B. No permit or written approval shall be issued until
11 all fees have been paid.

12 C. A check payable to the Board of County
13 Commissioners for One Hundred Twenty-Five Dollars (\$125.00) shall
14 be submitted with the permit application fee at the time of filing
15 the application.

16 D. The fee for an annual permit issued to a new
17 vendor after June 1 of a particular year shall be Sixty-Two
18 Dollars and Fifty Cents (\$62.50) payable to the Board of County
19 Commissioners.

20 E. Where Palm Beach County has requested a relocation
21 of the roadside stand, permit fees shall be waived.

22 F. Revocation of permits due to violation of state
23 statutes or County Ordinances will result in forfeiture of the
24 permit fee.

25 SECTION 8 - CRITERIA FOR PERMIT ISSUANCE:

26 Prior to the issuance of any permits under this
27 ordinance, the Engineering Department shall determine that the
28 following standards have been met or exceeded by the applicant:

29 A. The proposed location of the stand shall be no
30 closer than 100 feet from any intersection of two rights-of-way.

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1 B. Approved roadside stand locations must be 500 feet
2 apart. Two vendors selling different merchandise may be located
3 at each approved location.

4 C. Adequate site distance exists to ensure a safe
5 operation of the roadside stand with respect to the normal
6 movement of traffic in relation to the stand's position on the
7 right-of-way.

8 D. The Department shall analyze traffic volumes during
9 both peak and non-peak hours when considering permit requests.
10 The Engineering Department may deny an application or restrict the
11 operating hours of roadside vendors or revoke the permit based
12 upon sound traffic engineering principles.

13 E. No roadside stand shall be operated in such a
14 fashion as to block access to or damage or be located on
15 pedestrian or bicycle paths.

16 F. No roadside stand shall be located in such a manner
17 as to require, promote, or cause any vehicles to stop, stand or
18 park in violation of official traffic control devices including
19 but not limited to, signs, signals, and marking erected by
20 authority of Palm Beach County for the purpose of regulating,
21 moving or guiding traffic.

22 G. No roadside stand shall be permitted within 500
23 feet of an established ongoing legally zoned business selling
24 similar commodities.

25 SECTION 9 - CONDITIONS OF PERMITS:

26 A. All permits granted by the Engineering Department
27 shall:

28 1. Designate the location at which the seller may
29 operate.

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1 2. List any special conditions necessary to
2 assure compliance with this ordinance and to protect the public
3 from undue risk or harm.

4 3. Specify the authorized hours of operation
5 which shall be one-half hour before sunrise to one-half hour
6 before sunset except as may be otherwise restricted by the
7 Department and set forth on the face of the permit.

8 B. Permits shall be issued and continued subject to
9 the following conditions:

10 1. The vending area is kept free from garbage and
11 litter and complies with all applicable health laws and
12 requirements stated herein.

13 2. All equipment used in the operation be
14 removed from the road right-of-way one-half hour before sunset or
15 at end of authorized time and not be replaced until the next
16 authorized time of operation.

17 3. No free standing signs, flags, banners, free
18 standing tents, tables, or chairs shall be permitted within the
19 road rights-of-way. In addition thereto, any permitted operation
20 pursuant to this ordinance shall not display or otherwise erect
21 free standing signs, flags, banners or free standing tents on
22 private property within 500 feet of the permitted operation.

23 4. No stands permitted herein shall exceed 300
24 square feet and all such stands shall maintain mobility.

25 5. All roadside vendors will be required to
26 maintain an "adequate site safe distance" of no less than 15 feet
27 between the edge of pavement and their vending stands or vehicles.

28 6. All roadside vendors shall prominently display
29 a colored, waterproof vendor's permit plate issued by the County
30 Engineer. The permit and permit plate must be on the premises at
31 all times and both must be displayed together or the permit may

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1 be revoked or other sanctions imposed. In other words, the permit
2 or permit plate is not valid alone.

3 7. Vendors shall maintain the integrity of the
4 pavement edge and stabilization of the road in accordance with
5 accepted Engineering standards.

6 8. No permit issued hereunder shall be
7 transferred or sold.

8 9. No permit shall be issued to any one
9 individual, corporation, or other business entity for more than
10 two locations.

11 10. The permit is subject to the County's right
12 to use the right-of-way at any time for roadway or other valid
13 public purpose and the stand shall be relocated within 24 hours
14 of notice from the County that they need the right-of-way for
15 roadway or other valid purposes.

16 C. Any permit hereunder which remains unused for a
17 period of sixty (60) days shall lapse and be void and of no
18 effect. The County Engineer shall have the right to reissue a
19 permit for the same location upon a determination of the
20 Engineering Department that the location has remained unused for
21 a period of sixty (60) days.

22 SECTION 10 - DAMAGE TO COUNTY ROADS OR RIGHTS-OF-WAY:

23 Where any County road, right-of-way, sidewalk, bike path
24 or pathway is damaged or impaired in any way because of operation
25 of a roadside stand by any permittee pursuant to this ordinance,
26 the permittee shall, at his own expense, promptly restore the road
27 or right-of-way as nearly as possible to its original condition
28 before such damage. If the permittee fails to make such
29 restoration, the County of Palm Beach is authorized to do so and
30 charge the cost thereof against the permittee and/or surety as

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1 provided for in the permittee's performance bond or other security
2 and forfeit the permit.

3 SECTION 11 -RELOCATION UPON NOTICE BY THE COUNTY
4 ENGINEER:

5 A. Any permission granted for roadside vendor's permit
6 under this ordinance shall not constitute nor be construed as
7 permitting a permanent location within any County right-of-way.
8 Any stand permitted within the County right-of-way shall be
9 relocated upon request of the Engineering Department when in
10 conflict with any construction, reconstruction, or any project
11 performed by the County or its authorized representative, which
12 is deemed to be in the interest of the general public within 24
13 hours. The original permit shall be surrendered to the
14 Engineering Department subject to the relocation provisions
15 hereunder.

16 B. Any roadside stand permitted within the County
17 right-of-way shall be relocated if the stand location or permit
18 is in conflict with state statutes, County ordinances, or due to
19 changes in traffic flow, storage, curbing, signalization, and
20 speed limits or if the permit was issued without authority or
21 power to do so.

22 C. In the event two (2) or more vendors are relocated,
23 priority for a new permit and location will be given to the vendor
24 with the earlier permit date on permit application. In the event
25 both vendors applied on the same date, preference will be given
26 to vendor holding a Palm Beach County Vendors Permit for the
27 longest length of time.

28 D. Where Palm Beach County has requested a relocation,
29 the Engineering Department will be required to approve the new
30 permit and sites of the roadside stand, but permit fees shall be
31 waived.

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SECTION 12 - RENEWAL OF PERMITS:

All permits granted by the Engineering Department herein shall expire on December 31 of each year. To preserve the existing location a renewal fee of One Hundred Twenty-Five Dollars (\$125.00) shall be submitted by the existing permit holder with a renewal application prior to December 31. Ten days after the expiration date any applicant may request any location that has expired without renewal. Documentation as required by the Engineering Department indicating continuing compliance with the requirements of this ordinance shall be submitted with such renewal request.

SECTION 13 - REVOCATION OF PERMITS:

A. Vendors will be issued a Notice of Violation for violations of the ordinance. Notices will state the name of vendor, date, time of day and the nature of the violation and required corrective action if applicable. The vendor will be required to sign the notice and will receive a copy of the Notice of Violation. The original notice will be placed on file at the Engineering Department. Failure of the vendor to sign the notice may result in immediate revocation of the permit.

B. The violation may result in an immediate revocation unless a corrective action has been requested. Failure to take the corrective action as requested will result in revocation of the permit for failure to meet the requirements of this ordinance. In either event, revocation shall be effective upon mailing (posting) notification to the vendor at the address indicated on the permit application or the most recent address on file at the Engineering Department.

C. The original permit and permit plate shall be surrendered at 160 Australian Avenue, West Palm Beach, Florida, or directly to the noticing officer immediately upon notification.

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1 Failure to surrender the permit and/or plate shall result in a
2 Fifty Dollar (\$50.00) per day fine for each day after notification
3 of revocation until surrender occurs.

4 D. Permits may be revoked by the Engineering
5 Department for failure to meet any requirements of this ordinance,
6 any other County ordinance or state statute. Grounds for
7 revocation shall include, but not be limited to, the following:

8 1. Procuring permit through fraud,
9 misrepresentation, false or misleading statements.

10 2. Failing to vend at the location stated on
11 permit.

12 3. Selling goods or items not listed on the
13 permit at the time of application.

14 4. Failing to maintain a current liability
15 insurance policy and performance bond.

16 5. Failing to keep vending area free from garbage
17 and litter.

18 6. Vending on or adjacent to a sidewalk, area,
19 doorway, entranceway, or property abutting a public sidewalk, bike
20 path or pathway.

21 7. Using free standing signs, flags, banners,
22 tents, tables, or chairs.

23 8. Failing to have permit plate and permit at
24 vending location.

25 9. Failing to have permit plate displayed at
26 vending location.

27 10. Violence resulting in Police intervention.

28 11. Failing to maintain adequate site distances
29 to ensure safe operation of traffic.

30 12. Vending after authorized hours of operation.

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13. Failing to remove all vending equipment at the end of the day.

14. Transferring permit to unauthorized vendor.

15. Vending on state or municipal roads (where permit improperly issued).

16. Issuance of permit through mistake or inadvertence and/or without authority to do so.

17. Vending from a roadside stand location that interferes with the health safety and welfare of the general public.

18. Vending from a stand location that is in violation of official traffic control devices.

SECTION 14 - APPEAL:

After notice of revocation and surrendering of the permit and permit plate and within seven (7) days after notice of the revocation or denial, the vendor may file an appeal concerning the revocation or denial. The applicant shall deliver a notice of appeal along with a statement setting forth the grounds for the appeal and all allegations as to why said permit should not be revoked to the Engineering Department within the seven (7) day period. The Engineering Department shall thereupon forward a notice of appeal together with a report of the circumstances surrounding the application to the Board of County Commissioners for consideration within forty-five (45) days on the Regular Agenda at a regularly scheduled County Commission meeting. Decision of the Board of County Commissioners shall be conclusive and final. Should the Board of County Commissioners reverse the revocation or denial, the permit shall be reinstated and returned to the vendor. All parties shall bear their own costs and expenses of such proceedings and no damages shall be compensable as a result of any County or department's action hereunder.

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1 SECTION 15 - VIOLATION OF ORDINANCE:

2 In addition to the sanctions and penalties imposed,
3 violation of this ordinance shall be a misdemeanor of the second
4 degree. Such violations shall be prosecuted in the name of the
5 state in a court having jurisdiction of misdemeanors by the
6 prosecuting attorney thereof and upon conviction shall be
7 punishable by a fine not to exceed Five Hundred Dollars (\$500.00)
8 or imprisonment in the County Jail not to exceed 60 days or by
9 both fine and imprisonment.

10 SECTION 16 - ENFORCEMENT:

11 Palm Beach County Sheriff's Department and other law
12 enforcement agencies including County compliance officers or
13 agents are authorized and directed to enforce this ordinance as
14 well as Florida Statute §337.406 where applicable.

15 SECTION 17 - REPEAL OF LAWS IN CONFLICT:

16 All local laws and ordinances applying to the
17 unincorporated area of Palm Beach County in conflict with any
18 provisions of this ordinance are hereby repealed.

19 SECTION 18 - SEVERABILITY:

20 If any section, paragraph, sentence, clause, phrase or
21 word of this ordinance is for any reason held by the Court to be
22 unconstitutional, inoperative or void, such holding shall not
23 affect the remainder of this ordinance.

24 SECTION 19 - INCLUSION IN THE CODE OF LAWS AND
25 ORDINANCES:

26 The provisions of this ordinance shall become and be
27 made a part of the code of laws and ordinances of Palm Beach
28 County, Florida. The sections of the ordinance may be renumbered
29 or relettered to accomplish such, and the word "ordinance" may be
30 changed to "section," "article," or any other appropriate word.

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SECTION 20 - EFFECTIVE DATE:

The provisions of this ordinance shall become effective upon receipt of acknowledgement by the Secretary of State.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on the 16th day of Janaury, 1990.

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By Carol Elmer
Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

JOHN B. DUNKLE, CLERK
Board of County Commissioners

By Judith Cross
DEPUTY CLERK

By Mark R. Loefer
County Attorney

Acknowledgement by the Department of State of the State of Florida, on the 31st day of January, 1990, at N/A .M., and filed in the Office of the Clerk of the Board of County Commissioners of Palm Beach County, Florida.

EFFECTIVE DATE: Acknowledgement from the Department of State received on the 2nd day of February, 1990, at 10:42 A.M., and filed in the Office of the Clerk of the Board of County Commissioners of Palm Beach County, Florida.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, ex-officio, Clerk of the Board of County Commissioners, certify this to be a true and correct copy of the original filed in my office on 7/16/90
DATED at West Palm Beach, FL on 2/6/90
JOHN B. DUNKLE, Clerk
By: Deputy Clerk D.C.